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U.S. DISTRICT COURT
EASTERN DISTRICT OF MO
ST. LOUIS

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STAES OF AMERICA,)
)
)
Plaintiff,)
)
) Case No. 15 CR 489 JAR
v.)
)
MELVIN HARDY,)
)
Defendant.)

**MOTION OF CITY OF ST. LOUIS TO QUASH THE SUBPOENA TO TESTIFY AT A
HEARING OR TRIAL IN A CRIMINAL CASE DIRECTED TO THE CUSTODIAN OF
RECORDS, ST. LOUIS METROPOLITAN POLICE DEPARTMENT**

Comes now Movant, the City of St. Louis, by and through the St. Louis Metropolitan Police Department (SLMPD) and moves to quash the subpoena to testify at a hearing or trial in a criminal case issued on behalf of Defendant, Melvin Hardy, directed to the Custodian of Records, SLMPD, and in support thereof states as follows:

1. This is a criminal proceeding wherein the Defendant is charged with multiple felony drug and firearm related offenses.
2. Defendant has caused the issuance of a subpoena directed to the SLMPD Custodian of Records, commanding the witness to appear, testify, and bring certain documents and other items to Court on August 30, 2016, but that hearing was continued and SLMPD counsel anticipates a motion to compel or re-issuance of the subpoena.
3. The subpoena states as follows:

To: Custodian of Records, St. Louis Metropolitan Police Department...[commanding appearance]...[y]ou must also bring with you the following documents, electronically stored information, or objects...:

- 1) A copy of the digital photos along with a copy of original associated metadata as detailed on page 13 of [SLMPD] Incident Number CN 15-048757 in

connection to the execution of state level search warrant at 6328 Woodland, St. Louis MO on 9/24/2015

- 2) Any/all data retrieved from the 4 cell phones seized as detailed on pg 12 & 13 of [CN 15-048757] re execution of State level search warrant at 6328 Woodland on 09/24/2015 including but not limited to all data, images, mms & sms texts, audio, video, call logs, contacts, & full forensic cell phone extraction results/reports. [sic]

(A copy of the subpoena is attached hereto as Exhibit 1.)

4. SLMPD no longer has custody of any DVD of cell phones seized or DVD of surveillance photos. (See Affidavit of Michael Boll attached hereto as Exhibit 2.)

5. SLMPD does have copies of digital photos of the scene and evidence which are available to counsel today (except for two photos which show a baby/minor child). (See CN 15-048757 Page 6 attached hereto as Exhibit 3.)

6. SLMPD does have the cell phone(s) seized and identified in CN 15-048757.

7. The Custodian of Records and counsel for SLMPD have advised defense counsel that the evidence identified on CN 15-048757 including the above-described DVDs has been transferred to the Sheriff's Office via phone calls and letter. (See Correspondence Exhibit 4.)

8. The aforementioned subpoena is improper and should be quashed to the extent that the subpoena seeks records not in the possession of SLMPD, and for the reason that Rule 17(c) of the Federal Rules of Criminal Procedure authorizes the quashing of subpoenas that are "unreasonable or oppressive," and the aforementioned subpoena is unreasonable, in that it has not been shown to seek evidence which is relevant, admissible and adequately specific for use at the trial of this matter.

9. On the basis of the foregoing, this Court should quash the subpoena referenced in this Motion.

10. Should the Court deny this Motion in whole or in part, Defendant respectfully

requests additional time of thirty days in which to attempt to comply with the subpoena as directed by the Court.

11. Movant files its Memorandum of Law in Support of this Motion.

12. Movant is prepared to make oral argument in support of this Motion, if the Court deems it appropriate.

WHEREFORE, Movant, City of St. Louis prays this Court to quash the subpoena appended hereto as Exhibit 1, or in the alternative, additional time of thirty days in which to attempt to comply with the subpoena.

Respectfully submitted,

MICHAEL A. GARVIN
CITY COUNSELOR

By: /s/ Raymond B. Flojo


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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing was filed electronically with the Clerk of the Court on September 12, 2016, to be served by operation of the Court's electronic filing system upon all attorneys of record.

/s/ Raymond B. Flojo